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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 91

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,

Petitioner,

v.

VLADISLAV KELEMEN, *et al.*,

Respondents.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Ohio.

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JURISDICTION.

This reply is filed pursuant to Rule 24, sub-paragraph 4, of the Supreme Court Rules. Respondents, in their Brief in Opposition, attempt to persuade this Court that petitioner did not timely raise its First Amendment question either under the rules as interpreted by this Court or under Ohio's separate decisions to the same effect (Pages two and three of Brief in Opposition). An examination of the Journal Entry of the Court of Common Pleas (Petition page 43) as compared to the Journal Entry of the Court of Appeals (Petition page 64) reveals that nowhere did the Common Pleas Court use language in any way similar to that found in paragraph nine of the Entry of the Court of Appeals that a particular faction was to be denied by Court Order the "right to worship."

It is only after the filing of that Entry that the con-

stitutional question became apparent since only by the language of that Entry did a civil court prohibit the "free exercise of religion." Neither Ohio's decisions nor any decision of this Court have ever imposed upon petitioners to this Court the obligation of anticipating unconstitutional court decisions prior to the making of such decisions. As set forth in page seven of the Petition for Writ, petitioner at its first opportunity, i.e., in its appeal from the offending order, did raise the federal constitutional question.

ARGUMENT.

Respondents make certain factual assertions which, should this Court grant certiorari, will be found to be without support in the record. Petitioners wish to call this Court's attention to certain facts found in the Opinions, the Conclusions of Fact and Law, and the Journal Entry of the Court below.

1. There is only one Diocese in the United States of America and St. Demetrius is a member of the larger church structure only through its affiliation with that Diocese (Petition pages 62, 63).

2. The respondents (defendants below) adhere to a purported different diocese, one to which the church of St. Demetrius owes no allegiance (Petition page 54).

3. Belgrade has a responsibility to appoint a new head for the old Diocese; it has not done so; and it is only that Diocese which property is involved in questions of membership rights and their exercise (Petition pages 54 and 63).

The Common Pleas Opinion and Journal Entry simply ordered petitioners, concededly loyal to the long established Diocese, to turn over control of the church property

to respondents, concededly loyal to the illegally created diocese. Respondents, in their Amended Answer and Cross Petition, had asked simply that the church property be delivered to them as representatives of that illegal diocese, and the Common Pleas Court, because it regarded itself as not required to decide the question of the validity of the diocesan division did not reach any religious question but simply decided who was entitled to the church property on the basis of its feeling that it was enforcing proper orders of a proper diocese.

The Court of Appeals, when it decided that the division of the Diocese into three was an act beyond the power of Belgrade, then proceeded to decide who had the right to worship at the property and control the property by deciding who was and who was not schismatic. It is this decision of the Court of Appeals which petitioner believes is beyond the power of a civil court to do because of the First Amendment of the Constitution of the United States.

Petitioner presented the constitutional question at its first opportunity; that is, immediately subsequent to the filing of the order which was unconstitutional, and petitioner believes that the Writ as prayed for should issue.

On paragraph three of respondents' Brief they recite what they regard to be proper language for the question presented and in that recital is contained the implication that the highest ecclesiastical tribunal having jurisdiction of petitioner has adjudged them to be schismatic. On page 5 that statement is repeated and the attention of this Court is called to defendants' (respondents') Exhibit DDD found on pages 13 to 16 of the Appendix to Respondents' Brief. An examination of this Exhibit, as presented by respondents, discloses it to be simply a judgment of a judicatory of the Serbian Church against a named indi-

vidual, Bishop Milivojevich Dionisije. The document nowhere purports to be anything other than a judgment against that individual, and, accordingly, respondents' statement that the "faction" which is Petitioner herein has been adjudged schismatic is utterly without support.

Additionally, respondents offer (Brief in Opposition, pages 16 and 17) a letter from a church secretary addressed to a man supposedly Bishop of one of the three new dioceses. That diocese has been found never to have had lawful existence (Petition page 63). St. Demetrius was never in that diocese (Petition page 65). How can it be claimed that this letter in any way bears upon petitioners' right to worship? To say that it does makes as much sense as to say that the hypothetical Roman Catholic priest of respondents' page 8 could lawfully interfere with the practices of Serbian Orthodoxy. Of course, he could not; of course, we are not bound by any letter addressed to a diocesan Bishop to whom we owe no fealty.

Respondents on page one recite that Belgrade could rectify its administrative error in dividing the diocese; they do not recite that Belgrade has shown any inclination to do so. Petitioners concede that there may be church proceedings by which they could be determined to be schismatic after an opportunity to be heard according to those church rules. Respondents nowhere claim that this has been done, nor do they claim that there is any likelihood of it being done.

What petitioner feels is so egregious an error in the proceeding below is based on the above. Belgrade (and there is in the record eye witness testimony of Communist functionaries' participation in its acts [Record pages 536 to 585, the testimony of Father Zivan Stefanovich, the legal adviser to Belgrade in 1963]), and those loyal to Belgrade, are being awarded control of a church and its

property in Ohio simply because a civil court has made a choice between two contending factions on a purely ecclesiastical basis.

We are schismatic, according to the Court of Appeals, and *only* according to the Court of Appeals; respondents are not. No church body has ever told us we are schismatic, only three civil judges.

Petitioner urges this Court to grant its Petition for Certiorari; to examine the record fully rather than the assertions of contending counsel as to what that record contains; and to reaffirm one of the basic tenets of our Constitution, that the states may not decide questions of religious belief. Surely there can be no more violent example of the state's involving itself in church affairs than a declaration by a state court that certain acts amount to schism while others do not. Yet this is exactly what has been done.

We pray this Court to note probable jurisdiction; and to grant the Writ of Certiorari prayed for.

Respectfully submitted,

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